

REMARKS/ARGUMENTS

Claims 1-24 remain in this application.

Rejection Under 35 USC 103

I

Claims 1-24 remained rejected under 35 USC 103 as being unpatentable over Sunkel et al. (U.S. Patent No. 6,542,598). See Pages 2-3 of the Office Action. Applicants again respectfully disagree as set forth in the prior response filed on May 3, 2005 ("Prior Response").

According to the Office Action, "Sunkel et al. teach cosmetic compositions comprising organopolysiloxane elastomers and silicone oils wherein the composition may be in the form of a foundation, mascara, eye shadows, powders, blushes, lip color, and the like. . . . Example II at column 23 demonstrates a mascara composition comprising elastomer gels, silicone oils, pigments, and the like. . . . Applicant's have not demonstrated any criticality based on the claimed invention of less than about 1%, by weight, or wax." See Pages 2-3 of the Office Action.

Applicants submit herewith a Declaration Under 37 CFR 1.132 by Lien Ly ("Declaration"). As set forth in the Declaration, Ms. Ly conducted a stability study comparing the stability for a period of 36 weeks on two mascara products. The first, Neutrogena® Weightless Volume Mascara (Rich Black) ("Wax-free Mascara"), contained a silicone gel that includes an organopolysiloxane elastomer and a silicone oil and did not contain any wax. The second product was Neutrogena® Full Volume Mascara (Brown Black) ("Wax mascara"), a product that contains about 11.5%, by weight, of waxes. As is reported in the Declaration, following the thirty-six (36) weeks of storage at 25°C, the viscosity of the Wax Mascara increased on average by over one hundred percent, while the Wax-free Mascara, unexpectedly only increased on average nineteen percent (five times less than the Wax Mascara).

Accordingly, as suggested by the Examiner, Applicant's have demonstrated criticality based on the claimed invention. For the reasons set forth above and in the Prior Response, the

Serial No. 09/938,454

claimed invention is not obvious in light of Sunkel et al., and Applicants respectfully request that the above rejection under 35 USC 103(a) be withdrawn.

II

Claims 1-24 remained rejected under 35 USC 103 as being unpatentable over Shukuzaki et al. (U.S. Patent No. 5,266,321) in view of Sunkel et al. (U.S. Patent No. 6,542,598). See Pages 4-5 of the Office Action. Applicants again respectfully disagree.

According to the Office Action, Shukuzaki et al. teach an oily make-up cosmetic comprising a silicone gel composition . . . Shukuzaki is deficient only in the sense that he does not explicitly teach the make-up cosmetic in the form of mascara. . . . It would have been obvious to one of ordinary skill in the pharmaceutical art at the time the invention was made to use the teachings of Sunkel et al. within the teachings of Shukuzaki et al. because Sunkel et al explicitly teach cosmetic compositions comprising organosiloxane elastomers and silicone oils wherein the cosmetic composition may be in the various form, such as . . . mascara." See Pages 4-5 of the Office Action.

Applicants again respectfully disagree as set forth in the Prior Response. In addition, as discussed above and suggested by the Examiner, Applicants have submitted the Declaration that demonstrates unexpected benefits with respect to the claimed invention. Accordingly, the claimed invention is not obvious over Shukuzaki et al. in view of Sunkel et al, and Applicants respectfully request that the above rejection under 35 USC 103(a) be withdrawn

Applicants also respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

By: _____/William E. McGowan_____
William E. McGowan
Reg. No. 39,301

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2197